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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding.	92057049
Applicant	Plaintiff Joyetech (Changzhou) Electronics Co., Ltd.
Other Party	Defendant Pinhas Assouline and Sandra Malek
Have the parties held their discovery conference as required under Trademark Rules 2.120(a)(1) and (a)(2)?	Yes

### **Motion for Suspension in View of Civil Proceeding With Consent**

The parties are engaged in a civil action which may have a bearing on this proceeding. Accordingly, Joyetech (Changzhou) Electronics Co., Ltd. hereby requests suspension of this proceeding pending a final determination of the civil action. Trademark Rule 2.117.

Joyetech (Changzhou) Electronics Co., Ltd. has secured the express consent of all other parties to this proceeding for the suspension and resetting of dates requested herein.

Joyetech (Changzhou) Electronics Co., Ltd. has provided an e-mail address herewith for itself and for the opposing party so that any order on this motion may be issued electronically by the Board.

### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Facsimile or email (by agreement only) on this date.

Respectfully submitted,  
/corey k cho/  
Corey K. Cho  
ckc@slepatents.com  
lgigliotti@bellsouth.net  
03/26/2014

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Joyetech (Changzhou) Electronics Co., Ltd.  
Petitioner,

v.

Pinhas Assouline and Sandra Malek,  
Respondents.

Cancellation No.: 92057049

Registration No.: 3283706

Mark: EGO

**MOTION FOR SUSPENSION OF PROCEEDINGS WITH CONSENT**

Petitioner hereby moves to suspend, with consent of Respondents, the above-captioned proceeding pending disposition of civil action Case No. 13-62011-CIV DIMITROULEAS filed by Respondents against Petitioner in the U.S. District Court for the Southern District of Florida.

On September 16, 2013, Respondents filed a civil action against Petitioner alleging trademark infringement and unfair competition. In response, Petitioner filed its answer and counterclaim to seek cancellation of U.S. Reg. No. 3, 283,706 owned by Respondents, which is the subject registration of the instant cancellation proceeding. The pleadings in this civil action are attached here to as Exhibit A.

Inasmuch as the federal district court civil action involves issues common with the instant cancellation proceeding before the TTAB, Petitioner believes that the civil action is dispositive of issues for the pending cancellation proceeding. Accordingly, it is respectfully requested that all further proceedings in the instant cancellation be suspended pending disposition of Case No. 13-62011-CIV DIMITROULEAS.

Dated: March 26, 2014

Respectfully submitted,



Corey K. Cho  
Attorney for Petitioner  
Saliwanchik, Lloyd & Eisenschenk  
3107 SW Williston Road  
Gainesville, FL 32608  
Phone: (352) 375-8100  
Fax: (352) 372-5800  
[ckc@slepatents.com](mailto:ckc@slepatents.com)

# **EXHIBIT A**

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 13-62011-CIV-DIMITROULEAS

PINHAS ASSOULINE, and  
SANDRA MALEK, individual  
Residents of Florida,

Plaintiffs,

v.

JOYETECH (Changzhou) ELECTRONICS  
CO., LTD., a Chinese Corporation,

Defendant.

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**ANSWER TO COMPLAINT AND COUNTERCLAIM**

Defendant, Joyetech (Changzhou) Electronics Co., Ltd., files its Answer and Affirmative Defenses to the Complaint filed by Plaintiffs, Pinhas Assouline and Sandra Malek, and in response to each numbered paragraph thereof, states:

**Jurisdiction and Venue**

1. Admitted that the Complaint alleges trademark infringement/false designation of origin and unfair competition.
2. Admitted.
3. Admitted.

**The Parties**

4. Defendant is without knowledge and therefore denies the allegations in paragraph 4.
5. Defendant is not able to admit or deny the allegations because paragraph 5 is not a complete sentence.

6. Denied.

**Plaintiff's Rights in the EGO trademark**

7. Denied.

8. Defendant admits that Plaintiffs are the record owners of U.S. Reg. No. 3283706 in the United States Patent and Trademark Office ("USPTO") Database. Defendant denies the remaining allegations in paragraph 8.

9. Denied.

10. Denied.

11. Defendant admits that its authorized distributors utilize the trademarks eGo-C and eGo-T in US sales. Defendant denies the remaining allegations in paragraph 11.

12. Denied.

13. Denied.

14. Denied.

15. Denied.

16. Denied.

17. Denied.

18. Defendant admits to using the eGo-C and eGo-T trademarks in U.S. commerce through its authorized distributors, but denies that its use of the eGo-C and eGo-T trademarks is infringing.

19. Defendant admits that it has pending trademark applications for the marks eGo-T (U.S. Serial No. 85/477,422) and eGo-C (U.S. Serial No. 85451811) with the USPTO and that Plaintiffs' U.S. Reg. No. 3283706 was cited as a basis for refusing each of Defendant's applications. Defendant admits that it filed a cancellation action (Cancellation No. 92057049)

with the USPTO against U.S. Reg. No. 3283706 and that Defendants' applications for eGo-T and eGo-C are suspended pending the disposition of the cancellation action.

20. Defendant denies that it is infringing Plaintiff's rights.

21. Denied.

22. Denied.

23. Denied.

24. Denied.

25. Defendant admits that Plaintiffs have retained Luis R. Gigliotti, Esq. to represent them in this action. Defendant is without knowledge and therefore denies the remaining allegations in paragraph 25.

**COUNT I-TRADEMARK INFRINGEMENT/FALSE DESIGNATION OF ORIGIN**  
**UNDER 15 USC §1125(a)**

26. Defendant repeats and realleges its responses to paragraphs 1-25.

27. Defendant admits that this action purports to be an action for trademark infringement/false designation of origin.

28. Defendant admits that its authorized distributors use the eGo-C and eGo-T trademarks in US commerce in connection with the sale, distribution, and advertisement of electronic cigarettes. Defendant denies the remaining allegations in paragraph 28.

29. Denied.

30. Denied.

**COUNT II-REVERSE CONFUSION**

31. Defendant repeats and realleges its responses to paragraphs 1-25.

32. Defendant admits that this action purports to be an action for trademark infringement/false designation of origin.

33. Denied.

34. Defendant admits that its authorized distributors use the eGo-C and eGo-T trademarks in US commerce in connection with the sale, distribution, and advertisement of electronic cigarettes. Defendant denies the remaining allegations in paragraph 34.

35. Denied.

36. Denied.

**COUNT III-UNFAIR COMPETITION UNDER FLORIDA LAW**

37. Defendant repeats and realleges its responses to paragraphs 1-25.

38. Denied.

39. Denied.

**COUNT IV- DECEPTIVE AND UNFAIR TRADE PRACTICES  
UNDER FLA. STAT. §501.201**

40. Defendant repeats and realleges its responses to paragraphs 1-25.

41. Defendant admits that this action purports to be an action under the Florida Deceptive and Unfair Trade Practices Act.

42. Denied.

43. Denied.

**PRAYER FOR RELIEF**

WHEREFORE, Defendant respectfully requests that the Court deny all relief requested by Plaintiffs, award Defendant reasonable attorney's fees pursuant to 15 U.S.C. §1117 and Fla. Stat. §501.2105, and for such other and further relief this Court deems just and proper.

**FIRST AFFIRMATIVE DEFENSE – ABANDONMENT**

44. Upon information and belief, the mark EGO in U.S. Reg. No. 3283706 was abandoned by the applicant and original owner, Omega Tobacco Distributors, Inc. ("Omega")

with an intent not to resume use. This constitutes abandonment of the mark under Trademark Act Section 45, 15 U.S.C. § 1127.

45. Upon information and belief, Plaintiffs' abandoned and discontinued all trademark use of the subject EGO mark with an intent not to resume such use. This constitutes abandonment of the mark under Trademark Act Section 45, 15 U.S.C. § 1127.

46. Upon information and belief, neither Omega nor Plaintiffs made a bona fide use of the subject EGO mark in commerce within a consecutive three year period. Such non-use constitutes prima facie evidence of abandonment under Trademark Act Section 45, 15 U.S.C. § 1127.

#### **SECOND AFFIRMATIVE DEFENSE – INVALID ASSIGNMENT**

47. Upon information and belief, the mark EGO in U.S. Reg. No. 3283706 was abandoned by the applicant and original owner, Omega Tobacco Distributors, Inc. ("Omega") with an intent not to resume use. This constitutes abandonment of the mark under Trademark Act Section 45, 15 U.S.C. § 1127. Therefore, any subsequent assignment from Omega to Plaintiffs would have been invalid and void, leaving Plaintiffs with no rights in U.S. Reg. No. 3283706.

#### **THIRD AFFIRMATIVE DEFENSE – INVALID REGISTRATION**

48. Upon information and belief, Plaintiffs did not receive a valid assignment of the EGO Registration and therefore had no standing to file a Section 8 Declaration of Use with the USPTO in connection with the EGO Registration. Based upon the foregoing, the EGO Registration is invalid.

#### **COUNTERCLAIMS**



Counter-Plaintiff, Joyetech (Changzhou) Electronics Co., Ltd. (“Joyetech”), hereby sues Counter-Defendants, Pinhas Assouline and Sandra Malek (collectively, “Counter-Defendants”), and states:

### **NATURE OF COUNTERCLAIM**

49. The counterclaim asserted herein seeks cancellation of U.S. Reg. No. 3,283,706 (the “EGO Registration”) for the mark EGO, owned by Counter-Defendants.

### **JURISDICTION**

50. The court has jurisdiction over these counterclaims pursuant to section 37 of the Trademark Act of 1946 (the “Lanham Act”), 15 U.S.C. § 1119, which gives the court the power to order the cancellation of a registration in any action involving a registered mark. The EGO Registration has been pleaded by Plaintiffs in their action for trademark infringement. Venue is proper in this District based upon Plaintiffs’ commencement of their action for trademark infringement in this District and is also proper under 28 U.S.C. §§ 1391(b) and (c).

### **THE PARTIES**

51. Counter-Plaintiff, Joyetech, is a corporation organized and existing under the laws of China, having its principal address at New District No. 7, Feng Xiang Road Changzhou, Jiangsu, China. Joyetech has standing to assert this claim for cancellation based upon (i) Counter-Defendants’ allegations in the primary action that Joyetech is infringing Counter-Defendants’ rights in the mark covered by the EGO Registration, and (ii) Counter-Defendants’ EGO Registration being cited by the United States Patent and Trademark Office (“USPTO”) as a basis for refusing Joyetech’s trademark applications for the marks eGo-T (U.S. Serial No. 85/477,422) and eGo-C (U.S. Serial No. 85451811).

52. Upon information and belief, Counter-Defendants are individual residents of this District.

### **FACTS**

53. Joyetech filed two trademark applications with the USPTO for the marks eGo-T (U.S. Serial No. 85/477,422) and eGo-C (U.S. Serial No. 85451811). The USPTO has refused Joyetech's eGo-T and eGo-C applications under §2(d) of the Lanham Act based on the EGO Registration.

54. Joyetech filed Cancellation No. 92057049 with the USPTO seeking cancellation of the EGO Registration based upon abandonment of the EGO mark.

55. Counter-Defendants subsequently sued Joyetech in the instant action, alleging trademark infringement and unfair competition of the mark covered by the EGO Registration.

56. Upon information and belief, Omega Tobacco Distributors, Inc. ("Omega") was the applicant and original owner of the EGO Registration. Upon information a belief, Omega was dissolved in September 2007 and abandoned the EGO mark.

57. Counter-Defendants recorded a "Change of Name" for the EGO Registration from Omega to Counter-Defendants on October 29, 2012, over five (5) years after dissolution of Omega. Upon information and belief, Omega had already abandoned the EGO mark. Alternatively, upon information and belief, Omega never assigned any of the goodwill associated with the EGO mark to Counter-Defendants.

58. On November 8, 2012, Counter-Defendant, Pinhas Assouline, filed a Section 8 Declaration of Use in connection with the EGO Registration with the USPTO.

### **CANCELLATION BASED ON ABANDONMENT AND INVALID REGISTRATION**

59. Joyetech repeats and realleges each of the allegations contained in paragraphs 49-58 of this Counterclaim as if fully set forth herein.

60. Upon information and belief, Omega abandoned and discontinued all trademark use of the mark covered by the EGO Registration with an intent not to resume such use. This constitutes abandonment of the mark under Trademark Act Section 45, 15 U.S.C. § 1127.

61. Based on such abandonment by Omega, any purported assignment of the EGO mark and EGO Registration from Omega to Counter-Defendants is invalid and void.

62. Upon information and belief, Counter-Defendants did not receive a valid assignment of the EGO Registration and therefore had no standing to file a Section 8 Declaration of Use in connection with the EGO Registration. Based upon the foregoing, the EGO Registration should have been cancelled under Section 8 of the Trademark Act, 15 U.S.C. § 1058.

63. Alternatively, upon information and belief, Counter-Defendants' abandoned and discontinued all trademark use of the mark covered by the EGO Registration with an intent not to resume such use. This constitutes abandonment of the mark under Trademark Act Section 45, 15 U.S.C. § 1127.

64. Upon information and belief, neither Omega nor Counter-Defendants made a bona fide use of the mark covered by the EGO Registration in commerce within a consecutive three year period. Such non-use constitutes prima facie evidence of abandonment under Trademark Act Section 45, 15 U.S.C. § 1127.

WHEREFORE, Counterclaim Plaintiff Joyetech demands judgment against Counter-Defendants and respectfully requests this Court enter an Order cancelling U.S. Reg. No. 3,283,706 for the mark EGO.

Dated: March 14, 2014

Respectfully submitted,

By: /s/ Steven I. Peretz  
Steven I. Peretz (Florida Bar No. 329037)  
Michael B. Chesal (Florida Bar No. 775398)  
Josh E. Saltz (Florida Bar No. 70521)  
Peretz Chesal & Herrmann, P.L.  
2 S. Biscayne Blvd., Suite 3700  
Miami, FL 33131  
Tel.: (305) 341-3000  
Fax: (305) 371-6807  
Email: speretz@pch-iplaw.com  
*Counsel for Defendant and Counterclaim  
Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing is being served on March 14, 2014 on the counsel or parties of record in the manner specified on the Service List below.

/s/ Josh E. Saltz

**SERVICE LIST**

Louis R. Gigliotti  
1605 Dewey Street  
Hollywood, FL 33020  
954-922-8214  
922-8214 (fax)  
lgigliotti@bellsouth.net

*Counsel for Plaintiffs*  
**Via CM/ECF**

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

PINHAS ASSOULINE, and  
SANDRA MALEK, individual  
Residents of Florida,

CASE NO.: 13-62011-CIV-DIMITROULEAS

Plaintiffs,

v.

JOYETECH (Changzhou) ELECTRONICS  
CO, LTD., a Chinese Corporation,

Defendant.

\_\_\_\_\_ /

**PLAINTIFF;S ANSWER TO DEFENDANT'S COUNTERCLAIM**

Plaintiffs, PINHAS ASSOULINE and SANDRA MALEK, by and through undersigned counsel, answers Defendant's, JOYETECH (Changzhou) ELECTRONICS CO., LTD., counterclaim for cancellation as follows:

49. Plaintiff admits that the counterclaim seeks cancellation of US Reg. No.: 3,283,706, but denies the validity of the counterclaim.

50. Admitted.

51. Admitted.

52. Admitted.

53. Admitted.

54. Admitted.

55. Admitted.

56. Plaintiffs admit that Omega was the original owner, but deny that the mark was abandoned, and therefore demands strict proof thereof.

57. Plaintiffs deny the allegations contained in paragraph 57 of the Counterclaim, and therefore demands strict proof thereof.

58. Admitted.

59. Plaintiffs repeat each of its responses to paragraphs 49-58 as if fully set forth herein.

60. Plaintiffs deny the allegations contained in paragraph 60 of the Counterclaim, and therefore demands strict proof thereof.

61. Plaintiffs deny the allegations contained in paragraph 61 of the Counterclaim, and therefore demands strict proof thereof.

62. Plaintiffs deny the allegations contained in paragraph 62 of the Counterclaim, and therefore demands strict proof thereof.

63. Plaintiffs deny the allegations contained in paragraph 63 of the Counterclaim, and therefore demands strict proof thereof.

64. Plaintiffs deny the allegations contained in paragraph 64 of the Counterclaim, and therefore demands strict proof thereof.

#### **AFFIRMATIVE DEFENSES**

1. To the extent that there was any period of interrupted use, it was not with the intention not to continue use.

2. Plaintiffs' were victimized by a warehouse theft of their goods, which is currently subject to a separate lawsuit on the Florida state courts, and any period of interrupted use resulted from the wrongful.

3. Despite the fact that Plaintiffs were wrongfully dispossessed of their goods bearing the trademarks, these goods were sold in the marketplace, and thus, the mark was never abandoned.

4. The goods bearing the EGO trademark were being sold within the 3 year period prior to Defendant's filing an action for cancellation.

Dated: March 18, 2014

Respectfully submitted,

By: /s/ Louis R. Gigliotti/

Louis R. Gigliotti, Esq.  
Louis R. Gigliotti, PA  
Florida Bar No.: 71935  
1605 Dewey Street  
Hollywood, FL 33020  
Ph/Fax: (954) 922 8214  
lgigliotti@bellsouth.net

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed ECF and served via electronic mail on this 18th day of March, 2014.

By: /s/Louis R. Gigliotti  
Louis R. Gigliotti, Esq.

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

PINHAS ASSOULINE, and  
SANDRA MALEK, individual  
Residents of Florida,

CASE NO.:

Plaintiffs,

v.

JOYETECH (Changzhou) ELECTRONICS  
CO, LTD., a Chinese Corporation,

Defendant.

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**COMPLAINT FOR TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION**

Plaintiffs, PINHAS ASSOULINE and SANDRA MALEK, by and through undersigned counsel, sues Defendant, JOYETECH (Changzhou) ELECTRONICS CO., LTD., and alleges as follows:

**Jurisdiction and Venue**

1. This is a complaint against Defendant for trademark infringement/false designation or origin arising under the Lanham Act. 15 U.S.C. § 1051 *et seq.*, and unfair competition under Florida law, including Fla. Stat. § 501.201, *et seq.*
2. This Court has jurisdiction over the parties and over the subject matter of this action pursuant to 15 USC §1121, and 28 USC §1331, §1332, and 1367.
3. Venue is proper in this District as Defendant does business in this District and vails itself of the laws of this District.



### **The Parties**

4. Plaintiffs, PINHAS ASSOULINE and SANDRA MALEK are individual residents of this District and maintain a business in this District utilizing the EGO trademark at issue, for use on tobacco products.

5. Defendant, JOYETECH (Changzou) ELECTRONICS CO., LTD., a Chinese corporation doing business directly in this District and through distributors who sell infringing goods under the EGO trademark in this District.

6. Defendant, JOYETECH (Changzou) ELECTRONICS CO., LTD., owns, operates, and controls the sales of electronic cigarettes that use the EGO trademark, and at all times is and has been the moving force behind the infringing acts complained of herein with actual and full knowledge of Plaintiffs' rights.

### **Plaintiff's Rights in the EGO TradeEGO trademark**

7. Plaintiffs have owned and operated a wholesale cigar manufacturing and distribution business since at least as early as 2006 which makes, manufactures, sells, imports, and otherwise distributes cigars throughout the United States, and reside in this District.

8. Plaintiffs have continuously used the EGO trademark in commerce with the sale of tobacco products, namely cigars, since at least as early as 2006, and are the owners of US Registration No. 3283706.

9. Plaintiffs' use has been continuous and has not abandoned the EGO trademark or discontinued the use of the EGO trademark without intention to resume use.

10. Defendant, JOYETECH (Changzou) ELECTRONICS CO., LTD., makes, manufactures sell, imports, and distributes electronic cigarettes under the EGO trademark since, upon information and belief, 2011.

11. Upon information and belief, Defendant JOYETECH (Changzou) ELECTRONICS CO., LTD., utilizes the EGO trademark in its US sales.

12. At all times relevant, Plaintiffs used the EGO trademark to identify its goods and services to the consuming public.

13. Plaintiffs are the owner of all rights in and to the EGO trademark and its use predates that of Defendant, and Plaintiffs are the statutory senior user of the EGO trademark.

14. Plaintiffs are the owner of all statutory and common law rights in and to the EGO trademark and its rights are senior to and superior to those of Defendant.

15. Since Defendant began using the infringing EGO trademark, which is identical to Plaintiffs' EGO trademark in almost all respects, Plaintiffs are subject to a likelihood of confusion in the marketplace.

16. Defendant's unauthorized and infringing use of its EGO trademark has caused and is likely to cause confusion in the marketplace.

17. Plaintiffs have expended substantial sums in advertising and promoting its goods and services under the EGO trademark, and its use of the EGO trademark has been continuous and uninterrupted since at least as early as 2006.

18. Defendant has continued to use the infringing EGO trademark on its website, advertising flyers, trade show materials, on its products, through its distributors, and in other infringing ways.

19. Defendant has unsuccessfully attempted to register the infringing EGO trademark with the United States Patent and Trademark Office, and has filed a cancellation proceeding against Plaintiffs. The USPTO has refused registration, citing Plaintiffs' rights in the EGO trademark.

20. Defendant continues to infringe with no intention to discontinue their infringing use.

21. As a result of Defendant's acts of infringement, Plaintiffs have been damaged, and have lost the exclusive right to the use of their mark in the tobacco product marketplace, and have suffered actual and likelihood of confusion.

22. Defendant's acts are tantamount to willful infringement, and are a deliberate attempt to misappropriate the goodwill associated with Plaintiffs' EGO trademark, and is likely to and has caused confusion, as to the source, sponsorship, and affiliation of their goods and services.

23. As a result of Defendant's unlawful conduct, Plaintiffs have suffered significant and substantial damage, including damage to their reputation, and the goodwill associated with their EGO trademark.

24. All conditions precedent to Plaintiffs' claims have been satisfied.

25. Plaintiffs have engaged the services of the undersigned to represent it in this action and is obligated to pay a reasonable attorney's fee for the use of said services.

**COUNT I-TRADEMARK INFRINGEMENT/FALSE DESIGNATION OF ORIGIN**  
**UNDER 15 USC §1125(a)**

26. Plaintiffs re-allege and incorporate paragraphs 1-25 as though set forth in full herein.

27. This is an action for trademark infringement/false designation of origin under Section 43(a) of the Lanham Act, 15 USC §1115, §1117, and §1125(a).

28. Defendant, without the consent of Plaintiffs, is using the EGO trademark in connection with the sale, offering for sale, distribution, and advertisement of electronic cigarettes and related products, which is likely to cause confusion, or to cause mistake or to deceive as to the affiliation, connection, or association of Defendant with Plaintiffs' EGO trademark, or as to the origin, sponsorship, or approval of their goods by Plaintiffs.

29. Further, Defendant has falsely misrepresented the nature, characteristics, qualities, and geographic origin of Plaintiffs goods and services and commercial activities, as reflected in Defendant's product packaging, website, advertising materials, brochures, signage and distribution materials.

30. Defendant's use of the infringing EGO trademark, as described herein, is causing and will continue to cause damage to Plaintiffs, including, but is not limited to, irreparable harm for which there is no adequate remedy at law.

### **COUNT II-REVERSE CONFUSION**

31. Plaintiffs re-allege and incorporate paragraphs 1-25 as though set forth in full herein.

32. This is an action for trademark infringement/false designation of origin under Section 43(a) of the Lanham Act, 15 USC §1115, §1117, and §1125(a).

33. Defendant has so saturated the market with its advertising that it is likely that Plaintiffs may be deemed to be the junior user, and seen by the consuming public as a knock-off of Defendant, resulting in reverse confusion.

34. Defendant, without the consent of Plaintiff, is using the EGO trademark in connection with the sale, offering for sale, distribution, and advertisement of electronic cigarettes and related products, which is likely to cause confusion, or to cause mistake or to deceive as to the affiliation, connection, or association of Defendant with Plaintiffs' EGO trademark, or as to the origin, sponsorship, or approval of their goods by Plaintiffs.

35. Further, Defendant has falsely misrepresented the nature, characteristics, qualities, and geographic origin of Plaintiffs goods and services and commercial activities, as reflected in Defendant brochures, signage and mobile vehicle promotions.

36. Defendant's use of the infringing EGO trademark, as described herein, is causing and will continue to cause damage to Plaintiff, including, but is not limited to, irreparable harm for which there is no adequate remedy at law.

### **COUNT III-UNFAIR COMPETITION UNDER FLORIDA LAW**

37. Plaintiff re-alleges and incorporates paragraphs 1-25 as though set forth in full herein.

38. Defendant's conduct described herein constitutes unfair competition under Florida law.

39. Defendant's conduct is willful and intentional, and has caused and is continuing to cause irreparable harm for which there is no remedy at law.

### **COUNT IV-DECEPTIVE AND UNFAIR TRADE PRACTICES UNDER FLA. STAT. §501.201**

40. Plaintiff re-alleges and incorporates paragraphs 1-25 as though set forth in full herein.

41. This is an action under the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §501.201 et seq.

42. Defendant's actions described herein are calculated to deceive and actually do deceive the public into mistakenly believing that Defendant is affiliated, connected or associated with Plaintiffs' goods and services or that Defendant's goods and services originated with or are sponsored by or approved by Plaintiffs.

43. As such, Defendant has intentionally engaged and continue to engage in unfair methods of competition, unconscionable acts or practices, and unfair, deceptive acts or practices in the conduct of trade or commerce in violation of Fla. Stat. §501.204, and are so egregious that Plaintiffs should be entitled to its fees and costs under Fla. Stat. § 201.2105.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, PINHAS ASSOULINE and SANDRA MALEK, pray that the Court award the following relief:

A. Temporarily and permanently enjoining Defendant, its officers, employees, and agents, distributors, and all persons and entities in active concert or participation with any of them from using, displaying, advertising, or selling their goods and services under, or otherwise doing business or holding themselves out to the public under the EGO trademark, including all formative variations thereof, and any EGO trademark confusingly similar thereto;

B. Order Defendant to destroy all documents and materials, including stationary, signage, mailing postcards, business forms, business cards, invoices, brochures, pamphlets, catalogs, and other advertising and marketing materials bearing the EGO trademarks, or comprising any portion thereof;

C. Order that Defendant pay to Plaintiff monetary relief under 15 USC §1117(a) in an amount equal to Defendant's profits plus damages sustained by Plaintiffs, including treble damages, the costs of this action, including attorney's fees pursuant to 15 USC §1117(a) and Fla. Stat. §201.211.

D. Find that this case is exceptional pursuant to 15 USC 1117(a) and 1125(c), and any treble damages awarded to Plaintiff due to Defendant willful and intentional acts of trademark infringement, and unfair competition, and unfair and deceptive trade practices;

E. Any other relief as this Court may deem just and proper.

Dated: September 16, 2013

Respectfully submitted,

By: /s/ Louis R. Gigliotti/

Louis R. Gigliotti, Esq.  
Louis R. Gigliotti, PA  
Florida Bar No.: 71935  
1605 Dewey Street  
Hollywood, FL 33020  
Ph/Fax: (954) 922 8214  
lgigliotti@bellsouth.net

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed ECF and served via electronic mail on this 16th day of September, 2013.

By: /s/Louis R. Gigliotti  
Louis R. Gigliotti, Esq.